

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTIAN DOSCHER, *pro se*,

Plaintiff,

v.

CITY OF TUMWATER, *et al.*,

Defendants.

CASE NO. 3:22-cv-05340-RJB

ORDER ON TUMWATER
DEFENDANTS' MOTION TO
DISMISS

This matter comes before the Court on Tumwater Defendants' Motion to Dismiss (Dkt. 13). The Court has considered the pleadings filed in support of and in opposition to the motion and the remaining file, and it is fully advised.

Plaintiff Christian Doscher, proceeding *pro se*, brings this lawsuit against twenty-five defendants and claims twenty-seven causes of action arising out of alleged incidents at the Tumwater Regional Library (the "Library") on September 14 and 18, 2021. Dkt. 7. At that time, the Library had a masking policy in place in response to the COVID-19 pandemic. *See id.* at 5. Doscher claims that he has a disability that prevents him from wearing a covering over both his nose and mouth. *Id.* at 11. On both September 14 and 18, Library staff allegedly asked him to

1 comply with the policy and, after he refused, called the police. He alleges that Tumwater police
2 unconstitutionally seized him in violation of 42 U.S.C. § 1983, and he brings claims for
3 conspiracy and negligence. Dkt. 7. Doscher requests punitive damages and both injunctive and
4 declaratory relief.

5 For the reasons set forth in this Order, Tumwater Defendants’ motion to dismiss should
6 be granted.

7 **I. FACTS AND PROCEDURAL HISTORY**

8 **A. FACTS**

9 The facts set forth below are taken from the complaint and are assumed to be true for
10 purposes of this motion only, and they are limited to those raised against the City of Tumwater
11 and Carlos Quiles, R.J. Baughn, Stacy Brown, Rachael Black, James Moran, Danielle Dawson,
12 and Jon Weeks, all members of the Tumwater Police Department, (collectively “Tumwater
13 Defendants”).

14 On September 14, 2021, the Library had a masking policy in place that read: “Starting
15 August 13, regardless of vaccination status all staff and patrons (5 and older) must wear a mask
16 inside any Timberland Libraries.” Dkt. 7 at 5. Doscher had been previously diagnosed with a
17 breathing disability that causes him to become easily winded if walks with a covering over both
18 his mouth and nose. *Id.* at 122. There was also a state-wide policy in place at the time that
19 included recognizing mask exemptions for people with certain disabilities and prohibited
20 requiring proof of a disability. *See id.* at 22. As such, Doscher went to the Library that day
21 wearing a mask over his mouth but not his nose. *Id.* at 4.

22 Doscher told a Library employee of his disability when he arrived, and she permitted him
23 to be at the Library partially masked for about an hour. *Id.* at 13–14. A different staff member
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1 then told Doscher that he must mask. *Id.* at 14. After a bit more conversation, that employee
2 called the Tumwater Police Department and claimed that the Doscher refused to leave. *Id.*
3 Doscher says that he had never been asked to leave and that the employee lied to the police. *Id.*

4 Three Tumwater police officers, defendants Baughn, Brown, and Black, arrived soon
5 after the call. *Id.* at 21. Officer Baughen told Doscher that the Library had reported him for
6 refusing to wear a mask properly or leave. *Id.* After questioning about whether Doscher was
7 exempt from the mask requirement because of his disability, Officer Baughn allegedly said, “you
8 need to leave immediately.” *Id.* at 22. Doscher requested that the police make a written report
9 of the incident to which Officer Baughn responded, “[w]e’re not going to make a written report
10 of this, as it’s not a criminal act unless you make it that way.” *Id.* at 23. According to Doscher,
11 he felt compelled to follow the officer’s direction to leave and left with the officers without
12 incident. *Id.* at 24. He was told that he could not return to the Library for the rest of the day. *Id.*

13 A similar incident occurred on September 18, 2021, in which Tumwater police informed
14 Doscher that “he was not free to disregard their commands, but must leave the library or be
15 subject to arrest for trespass.” *Id.* at 37. Officer Baughn, who was present both days, gave
16 Doscher a trespass warning document with preprinted citations to the Washington State criminal
17 trespass statute and told Doscher that he must stay out of the Library for the day. *Id.* at 38.

18 Doscher alleges that Tumwater Police Lieutenant Carlos Quiles implemented policies and
19 practices that caused his injury and that Tumwater Chief of Police Jon Weiks ratified police
20 officers’ unconstitutional behavior. Dkt. 7.

21 **B. PENDING MOTION AND ORGANIZATION OF OPINION**

22 In the pending motion, Tumwater Defendants move to dismiss all claims alleged against
23 Tumwater police officers and claims against the City of Tumwater for alleged police activity,
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1 practices, and policies. Dkt 13. Doscher also brings claims against the City of Tumwater based
 2 on the actions of Library employees. Dkt. 7 at 46. Neither the pending motion to dismiss, nor
 3 does this Order address claims against the City of Tumwater for Library actions.

4 Doscher both opposes the motion to dismiss on its merits, and he argues that it should not
 5 be considered because it is an improper motion for reconsideration. Dkt. 18. He also argues that
 6 rebuttal is not needed because the motion is fatally flawed. *Id.* The Court will address those
 7 arguments before turning to the merits.

8 **II. DISCUSSION**

9 **A. THE MOTION TO DISMISS IS NOT A MOTION FOR RECONSIDERATION**

10 Doscher argues that the pending motion to dismiss is an improper motion for
 11 reconsideration because his complaint was already screened and approved when a magistrate
 12 judge approved his motion to proceed *in forma pauperis* (“IFP”) under 28 U.S.C. § 1915A. Dkt.
 13 18 at 2. He cites *Leal v. Georgia Dep’t of Corr.*, 254 F.3d 1276 (11th Cir. 2001), to support his
 14 argument.

15 While *Leal* states that the standard for dismissal under 28 U.S.C. § 1915A is the same as
 16 under Rule 12(b)(6), it does not establish that screening under § 1915A precludes a defendant
 17 from bringing a motion to dismiss. Furthermore, § 1915A does not apply to this case because it
 18 governs screening complaints filed by prisoners. 28 U.S.C. § 1915A(a) (“Screening – The court
 19 shall review, before docketing, if feasible or, in any event, as soon as practicable after docketing,
 20 a complaint in a civil action in which a prisoner seeks redress from a governmental entity or
 21 officer or employee of a governmental entity.”) Courts may screen a complaint when reviewing
 22 an IFP motion brought by a non-prisoner, *see* 28 U.S.C. § 1915(e)(2), but that did not occur in
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1 this case. His IFP motion was merely approved because he did “not appear to have the funds
2 available to afford the \$403.00 Court filing fee.” Dkt. 6.

3 Doscher also appears to argue that Federal Rule of Civil Procedure 12(h)(3) (Lack of
4 Subject-Matter Jurisdiction) supports his argument that the motion to dismiss is an improper
5 motion for reconsideration. Rule 12(h)(3) was not raised by Tumwater Defendants, is not
6 relevant to this motion, and does not support his argument.

7 Therefore, the Tumwater Defendant’s motion to dismiss is not an improper motion for
8 reconsideration.

9 **B. PLAINTIFF’S ARGUMENT ABOUT REBUTTAL SHOULD BE DENIED**

10 Doscher argues that Tumwater Defendants should not be permitted to file a reply in
11 support in their motion to dismiss because their motion is fatally flawed. Dkt. 18 at 5. A moving
12 party, however, has a right to file a reply brief. *See* Western District of Washington Local Civil
13 Rule 7(b)(3). That right does not depend on whether a motion has merit.

14 Therefore, the Court will consider Tumwater Defendants’ pending motion to dismiss and
15 the reply filed in support.

16 **C. STANDARD FOR MOTION TO DISMISS**

17 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable
18 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*
19 *v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as
20 admitted and the complaint is construed in the plaintiff’s favor. *Keniston v. Roberts*, 717 F.2d
21 1295 (9th Cir. 1983). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does
22 not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his
23 entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the
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1 elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
2 (2007) (internal citations omitted). “Factual allegations must be enough to raise a right to relief
3 above the speculative level . . . on the assumption that all the allegations in the complaint are true
4 (even if doubtful in fact).” *Id.* Plaintiffs must allege “enough facts to state a claim to relief that
5 is plausible on its face.” *Id.* at 556.

6 Additionally, a complaint filed by a *pro se* litigant, however inartfully pleaded, must be
7 held to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*,
8 551 U.S. 89, 94 (2007). As such, courts must give *pro se* litigants notice of deficiencies in their
9 complaint and an opportunity to amend unless it is “absolutely clear that the deficiencies of the
10 complaint cannot be cured by amendment.” *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir.
11 2007).

12 **D. SECTION 1983 GENERALLY**

13 To state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct
14 complained of was committed by a person acting under color of state law, and that (2) the
15 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws
16 of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*,
17 *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an
18 alleged wrong only if both of these elements are present. *Haygood v. Younger*, 769 F.2d 1350,
19 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986). To state a civil rights claim, a plaintiff
20 must set forth the specific factual bases upon which he claims each defendant is liable. *Aldabe v.*
21 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Vague and conclusory allegations of official
22 participation in a civil rights violations are not sufficient to support a claim under § 1983. *Ivey v.*
23 *Bd. of Regents*, 673 F.2d 266 (9th Cir. 1982). To bring a § 1983 claim against a municipality or
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1 municipal policy maker, the plaintiff must plausibly allege that official policy or practice was the
 2 “moving force” behind the alleged constitutional violation. *Monell v. Dep’t of Soc. Servs. of City*
 3 *of New York*, 98 U.S. 658, 694–95 (1978).

4 **E. COUNTS 3 AND 11: UNREASONABLE SEIZURE AGAINST CITY OF**
 5 **TUMWATER**

6 Doscher claims in both Counts 3 and 11 that he was unreasonably seized in violation of
 7 the Fourth Amendment. Dkt. 7 at 21–26. The claims are the same, except that Count 3 arises
 8 out of the September 14 incident and Count 11 from September 18. *Id.* at 21, 36.

9 The Fourth Amendment protects “[t]he right of the people to be secure . . . against
 10 unreasonable searches and seizures” by the government. U.S. Const. amend. IV. To state a
 11 claim, a plaintiff must plausibly allege that there was a governmental search or, as in this case,
 12 seizure, and that it was unreasonable. *See Brower v. Cnty. of Inyo*, 489 U.S. 593, 599 (1989).

13 As a threshold, these claims fail because Doscher brings them against “Tumwater,”
 14 which is presumably the City of Tumwater. To bring a claim against a municipality, a plaintiff
 15 must allege that municipal policy or practice was the driving force behind the claimed injury.
 16 *Long v. City of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Doscher does not identify a
 17 policy or practice at issue. Instead, both counts are based only on his interaction with City of
 18 Tumwater police officers while at the Library. However, he also fails to state a viable claim to
 19 the extent that he intends to bring it against any individual police officer.

20 Doscher’s argument is interesting and creative. According to the Complaint, police
 21 officers came to the Library after receiving a call from a Library employee that Doscher refused
 22 to leave on September 14. Dkt. 7 at 21. After some alleged back and forth discussion about
 23 mask policy, policy exemptions, and trespass, Officer Baughn allegedly told Doscher “you need
 24 to leave immediately” and, after he did, that he was banned from the Library for the rest of the

1 day. *Id.* at 22–24. Doscher emphasizes that a reasonable person would have felt compelled to
2 comply. *Id.*; Dkt. 18 at 7. He alleges that the September 18 incident was essentially the same
3 except that he was also given a trespass warning notice. Dkt. 7 at 37–39. Doscher theorizes that
4 officers seized him because they controlled his freedom of movement by pressuring him to leave
5 the Library. *Id.*; *Id.* at 22–24; Dkt. 18 at 7. In other words, he wasn’t seized because he was
6 forced to stay; he was seized because he was forced to leave.

7 Doscher’s argument draws a conclusion based on some language used in Fourth
8 Amendment analysis, but it takes that language out of context and veers too far from the
9 meaning of the word “seizure.” A quintessential seizure is an arrest. *Torres v. Madrid*, 141
10 S.Ct. 989, 996 (2021). As applied to a person, as opposed to property, “the word ‘seizure’
11 readily bears the meaning of a laying on of hands or the application of physical force to restrain
12 movement[.]” *Id.* at 995 (quoting *Hodari D.*, 499 U.S. at 626).

13 A seizure can be accomplished either by physical control or force. *Torres*, 141 S.Ct. at
14 1001. In a seizure based on control, there must be an objective show of authority to which a
15 person submits. *United States v. Mendenhall*, 446 U.S. 522, 554 (1980). Furthermore, the
16 submission must be to governmental detention, even if just momentarily, as would be the case in
17 a traffic stop, *Brendlin v. California*, 551 U.S. 249 (2007), or a “stop and frisk,” *Terry v. Ohio*,
18 392 U.S. 1 (1968). In other words, there is only a seizure if “a reasonable person would have
19 believed that he was not free to leave.” *Id.*; see generally, *NAACP of San Jose/Silicon Valley v.*
20 *City of San Jose*, 562 F. Supp. 3d 382, 405 (N.D. Cal. 2021) (rejecting claim based on restraint
21 of freedom of movement without detention).

22 Doscher was not seized by being pressured to leave the Library. He not only was free to
23 leave; he was encouraged to leave. His freedom of movement was limited in the sense that he
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1 felt he could not stay at the Library, but he was never detained. Ultimately, he used his freedom
2 of movement to leave without incident. Dkt. 7 at 24.

3 The parties also frame Doscher's encounter as a "Terry stop." Dkts. 13 at 5, 18 at 7. A
4 Terry stop, named for *Terry v. Ohio*, 392 U.S. 1 (1968), is a seizure, but it "is a far more minimal
5 intrusion" than an arrest. *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (citing *Terry*, 392 U.S.
6 at 30). Because it is merely a brief investigative detention, an officer only needs reasonable
7 articulable suspicion of a crime as opposed to the probable cause that is required to make an
8 arrest. *Wardlow*, 528 U.S. at 677.

9 Doscher was not subjected to a Terry stop. It is well-established law that a police officer
10 merely asking questions does not constitute a Terry stop. *United States v. Brown*, 996 F.3d 998,
11 1005 (9th Cir. 2021) (quoting *Bostick*, 501 U.S. at 434). It also is established that issuing a
12 written citation alone is not a seizure. *White v. City of Laguna Beach*, 679 F. Supp. 2d 1143,
13 1155–56 (C.D. Cal. 2010) (collecting cases); see *Bielanski v. Cnty. of Kane*, 550 F.3d 632, 642
14 (7th Cir. 2008) ("No court has held that a summons alone constitutes a seizure, and we conclude
15 that a summons alone does not equal a seizure for Fourth Amendment purposes. To hold
16 otherwise would transform every traffic ticket and jury summons into a potential Section 1983
17 claim.").

18 Plaintiff alleges that he spoke with police officers and they gave him a trespass warning
19 notice. Dkt. 7 at 38. These actions do not amount to a Terry stop. But even assuming that
20 Doscher had been subjected to a Terry stop, it would not have been unreasonable because
21 officers had reasonable articulable suspicion that he was trespassing. Doscher alleges that
22 Library employees told the police that he refused to leave. It was reasonable for the officers to
23 act as they did based on the totality of the circumstances.

1 Accordingly, counts 3 and 11 should be dismissed.

2 **F. REMAINING CONSTITUTIONAL CLAIMS**

3 Doscher's remaining constitutional claims are also based on his allegedly
4 unconstitutional seizure. He brings counts 4 and 12 against Tumwater Police Lieutenant Carlos
5 Quiles for an alleged police department policy that Quiles implemented, and counts 5 and 13
6 against Tumwater Police Chief Weiks for ratifying officers' conduct at the Library. Dkt. 7.
7 Count 16 includes *Monell* claims against the City of Tumwater based on Quiles' alleged policy,
8 as well as claims based on the actions of non-moving defendants, and Doscher brings count 17
9 against all defendants for conspiring to subject Library patrons to seizures for not wearing masks
10 regardless of medical exemption or disability-request. *Id.*

11 In each of these claims, Doscher argues that Tumwater Defendants are liable because
12 they caused his unlawful seizure. As above, each of these claims fails because Doscher does not
13 state a viable claim that he was unreasonably seized in violation of the Fourth Amendment.

14 In addition, Doscher's claims based on Quiles' alleged policy, counts 4, 12, and 16,
15 should be dismissed because Doscher does not plausibly allege that the policy was the "moving
16 force" behind the police officers' actions at the Library. The alleged policy comes from an email
17 Quiles sent saying that a private store has the right to deny entry to a person who refuses to wear
18 a mask. Dkt. 7 at 27. The email says that officers should "[b]e diplomatic and polite and seek
19 voluntary compliance," but that it is ultimately a private store's right to refuse service and "these
20 circumstances are treated as a trespassing complaint just like all other trespassing complaints."
21 *Id.* Assuming that this email is a policy, it merely states basic trespass law for private business.
22 It cannot be said "that the [alleged] injury would have been avoided" had a different policy been
23 implemented. *Long v. Cnty of Los Angeles*, 442 F.3d 1178, 1190 (9th Cir. 2006).

1 Therefore, counts 4, 5, 12, and 13 should be dismissed, and counts 16 and 17 should be
2 dismissed against the Tumwater Defendants.

3 **G. QUALIFIED IMMUNITY**

4 Defendants in a § 1983 action are entitled to qualified immunity from damages for civil
5 liability if their conduct does not violate clearly established statutory or constitutional rights of
6 which a reasonable person would have known. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)
7 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). Qualified immunity balances two
8 important interests: the need to hold public officials accountable when they exercise power
9 irresponsibly and the need to shield officials from harassment, distraction, and liability when
10 they perform their duties reasonably. *Harlow*, 457 U.S. at 815. The existence of qualified
11 immunity generally turns on the objective reasonableness of the actions, without regard to the
12 knowledge or subjective intent of the particular official. *Id.* at 819. Whether a reasonable officer
13 could have believed his or her conduct was proper is a question of law for the court and should
14 be determined at the earliest possible point in the litigation. *Act Up!/Portland v. Bagley*, 988
15 F.2d 868, 872–73 (9th Cir. 1993).

16 In analyzing a qualified immunity defense, the Court must determine: (1) whether a
17 constitutional right would have been violated on the facts alleged, taken in the light most
18 favorable to the party asserting the injury; and (2) whether the right was clearly established when
19 viewed in the specific context of the case. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “The
20 relevant dispositive inquiry in determining whether a right is clearly established is whether it
21 would be clear to a reasonable officer that his conduct was unlawful in the situation he
22 confronted.” *Id.*

1 As established in the previous sections, Doscher does not meet the first prong of the
2 qualified immunity analysis. His allegations do not amount to an unconstitutional seizure. He
3 also fails to meet the second prong. Even assuming that Doscher had a constitutional right to be
4 at the Library and that Tumwater Defendants violated that right, his right was not clearly
5 established at the time. Doscher argues that Officers Moran and Baughn acted in a “plainly
6 incompetent” manner and emphasizes that he never trespassed. Dkt. 18 at 8. He also says that
7 Weiks knew that Tumwater police prevented him from returning to the Library on those days.
8 *Id.* at 9. But Doscher does not provide any law or supporting facts to show that he had a
9 constitutional right to be at the Library because his breathing disability exempted him from the
10 Library’s mask policy or that Tumwater Defendants unreasonably disregarded that right. Being
11 merely incorrect about the law of trespass does not establish a constitutional violation. The
12 Tumwater Defendants reasonably believed that their conduct was proper and constitutional.

13 Therefore, qualified immunity bars Doscher’s claims against all individual police officers
14 and supervisors.

15 **H. COUNTS 19, 20, 25, & 26: STATE LAW NEGLIGENCE**

16 Doscher argues that Defendant police officers Baughn and Moran and the City of
17 Tumwater breached a duty not to subject him to a Terry stop without reason to believe he had
18 committed a crime. Dkt. 7 at 65–66, 69. As with the constitutional claims, Doscher’s
19 negligence claim fails because he was not subjected to a Terry stop or other seizure.

20 **I. CONCLUSION**

21 Doscher’s claims against Carlos Quiles, R.J. Baughn, Stacy Brown, Rachael Black,
22 James Moran, Danielle Dawson, and Jon Weiks should be dismissed with prejudice because it is
23 “absolutely clear that the deficiencies of the complaint cannot be cured by amendment.”
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1 *Weilburg*, 488 F.3d at 1205. His legal theory that he was seized because he was told he could
2 not return to the Library for the rest of the day is not a cognizable seizure under the Fourth
3 Amendment. Furthermore, even if it was and even if he were seized, his claims against
4 individual police officers and supervisors are barred by qualified immunity. The City of
5 Tumwater, however, should not be dismissed from the lawsuit at this time because Doscher also
6 brings claims against it based on Library employees' conduct.

7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that:

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- Tumwater Defendants' Motion to Dismiss (Dkt. 13) **IS GRANTED**;
 - Defendants Carlos Quiles, R.J. Baughn, Stacy Brown, Rachael Black, James
10 Moran, Danielle Dawson, and Jon Weiks **ARE DISMISSED** from this matter.

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12 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
13 to any party appearing *pro se* at said party's last known address.

14 Dated this 30th day of August, 2022.

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16 ROBERT J. BRYAN
17 United States District Judge